IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 40 OF 2000

Mahadev Maru Rajapure & ors. ... Appellants

V/s

Shamrao Shivram Korade & anr. ... Respondents

Shri R.R. Salvi for the appellants.

Shri Savji holding for Mr. P.B. Shah for Respondents.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2004.

P.C.:

1. This appeal is preferred against the judgment and order passed by the Addl. District Judge, Satara dated 16.10.1990 dismissing the civil appeal filed by the appellant and confirming the judgment and order passing the decree of possession in favour of the plaintiff by order dated 16.11.1990.

2. Heard learned counsel for both parties. Perused the record.

3. The plaintiff came with the case that the suit plot

admeasuring 15 x 10 ft. out of C.T.S. No. 2293 at Wai, Tal. Wai has been purchased by him from defendant by registered sale deed executed on 12.7.1977. In December, 1982 plaintiff started to make measurement for construction when defendant obstructed him and, therefore, notice was issued in March, 1983 disputing plaintiff's right over the property. Hence the suit for perpetual injunction, in the alternative, for possession was filed.

The learned Trial Judge adjudicated the suit on merits and came to the conclusion that the ownership title by virtue of the sale deed was proved by the plaintiff and the defendant had failed to establish his plea that the sale deed was obtained by misrepresentation. Plaintiff was also held not to be in possession and, therefore, injunction was refused but decree for possession as prayed for alternatively was granted.

Appeal was carried to the District Court, Satara, where the learned Addl. District Judge adjudicated the appeal on merits and came to the conclusion that the appeal deserves to be dismissed and dismissed it accordingly and hence the present appeal.

4. At the outset, it may be noted that the issues involved in the dispute are purely questions of fact duly adjudicated by both Courts below and have recorded concurrent findings thereon. The learned advocate for the appellant sought to raise question of law to the effect that whether both the Courts below were right in foisting the onus of proving documents Exhs. 39 & 49 on the defendant ? However, perusal of the judgments of both the Courts below show that the onus is rightly held to be shifted on the defendant especially when he had come with a case that the sale deed in question was obtained by misrepresentation.

5. In the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar, reported 1999 SCC 2213,** the Apex Court has observed that the conditions mentioned in Sec. 100 of the C.P.C. must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings recorded by the the lower appellate Court, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers under Sec.100 in the second appeal. Adopting any other approach is not permissible. It is not within the domain of the High

Court to investigate the grounds in which the findings are arrived at by the last Court of fact, being the first appellate Court. In view of this dicta, and after taking into account the issues involved in this appeal, I have no hesitation to hold that no substantial question of law is involved in this appeal and as such it deserves to be dismissed and stands dismissed in limine with no order as to costs.

Civil application also stands dismissed with no order as to costs.

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